

Before the
Federal Communications Commission
Washington, DC

In the Matter of:

Alliance for Community Media)	
Petition for Waiver of Registration)	
and Certification Requirement of)	CG Docket No. 05-231
Closed Captioning Rules)	

Reply Comments of

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)
National Association of the Deaf (NAD)
Hearing Loss Association of America (HLAA)
Association of Late-Deafened Adults (ALDA)
Cerebral Palsy and Deaf Organization (CPADO)
California Coalition of Agencies Serving the
Deaf and Hard of Hearing (CCASDHH)
National Association of State Agencies of the
Deaf and Hard of Hearing (NASADHH)
Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)
Rehabilitation Engineering Research Center on Technology for the Deaf and Hard
of Hearing, Gallaudet University (DHH-RERC)

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Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), the Cerebral Palsy and Deaf Organization (CPADO), the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), the National Association of State Agencies of the Deaf and Hard of Hearing (NASADHH), and the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), collectively, “Consumer Groups,” and the Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (DHH-RERC), respectfully reply to comments on the Aug. 26, 2016 petition for waiver of the Alliance for Community Media (ACM) (ACM Petition).¹

In general, we note that no commenters contradicted the recommendations in our comments that the Commission must, if it chooses to grant ACM’s petition:

- Ensure that any exemption from the certification rules applies only to programming aired on public access, governmental, and educational access (PEG) channels that are *actually exempt from the caption provision rules* and avoid incorrectly implying that PEG channels are exempt from the caption provision rules generally;
- Make clear that any exemption of PEG programmers from the certification rules will not preclude or prejudice in any way the narrowing or elimination of exemptions that may apply to PEG channels when the Commission acts on the Consumer Groups’ petition to review and narrow or eliminate categorical exemptions;
- Clarify and emphasize that all PEG channels whose programs are all exempt must certify that all their programs are exempt and specify each category of exemption they claim applies;

¹ https://ecfsapi.fcc.gov/file/10825083956243/ACM_Petition%2008.25.2016.pdf

- Clarify and emphasize that all PEG channels carrying at least some non-exempt programming must certify which, if any, of their programs are exempt and which, if any, exemptions they claim apply; and
- Clarify and emphasize that all PEG program *producers* that produce at least some non-exempt programming (or programming aired on non-exempt channels) must certify the specific exemption or exemptions claimed for each program.²

Additionally, we urge the Commission to act carefully in addressing the request for clarification or waiver in the comments of NCTA – The Internet & Television Association and to remind governmental programmers of their obligations under federal disability law to caption programming even on exempt PEG channels.

I. The Commission should tread carefully in clarifying certification obligation outside the context of PEG programmers.

NCTA urges the Commission to “clarify that that video program owners of individual programs included in linear program networks distributed by MVPDs need not register or certify compliance with the captioning rules.”³ NCTA explains:

The *Second Report and Order* [on caption quality] states that “for purposes of the Commission’s television closed captioning requirements, we conclude that the term video programmers includes all VPOs.” And because the *Second Report and Order* requires “each video programmer” to “submit a certification to the Commission” stating that the “video programmer” provides captioning for its programs in compliance with the

² See generally Comments of TDI, et al. (Feb. 9, 2017), <https://ecfsapi.fcc.gov/file/102091327006936/2017.02.09%20ACM%20PEG%20Waiver%20Comments%20final.pdf>

³ Comments of NCTA at 1 (Feb. 9, 2017), <https://ecfsapi.fcc.gov/file/10209784926016/020917%2005-231%20Comments.pdf>.

rules or is exempt, the [ACM Petition seeks a waiver of this requirement for producers of PEG programming.⁴

NCTA notes that, under ACM's reading of the certification rule, "producers of every program licensed for distribution would conceivably be covered, whether the programs are aired on an access channel exempt from the captioning rules or on any other channel."⁵

NCTA argues that "any waiver granted to ACM should make clear that no program-by-program certification or registration is required by the revised captioning responsibility rules" or alternatively that "any such requirement should be waived in the case of non-broadcast networks that themselves certify compliance with the rules."⁶

We concur with NCTA that the rules articulated in the Commission's *Second Report and Order* on caption quality on are amenable to a broad reading that could impose a program-by-program certification requirement on non-PEG programming. However, we note that this issue is beyond the scope of those raised by the Public Notice on the ACM Petition, which raises solely the issue of certifications for programming distributed "exclusively to [PEG channels], to the extent that such channels are exempt from the provision of closed captioning under the Commission's rules."⁷ It would not be appropriate or procedurally proper at this point for the Commission to make changes to a critical certification rule in the context of an unrelated waiver petition without notice or the solicitation of a fuller record on the broader impacts and any unintended consequences of such changes.

⁴ *Id.* at 2 (citing *Closed Captioning of Video Programming, Second Report and Order*, CG Docket No. 05-231, 31 FCC Rcd. 1469 (Feb. 19, 2016) (internal pincites omitted), https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-17A1_Rcd.pdf).

⁵ *Id.* at 3.

⁶ *Id.* at 5.

⁷ *Public Notice, Petition For Waiver Of Registration And Certification Requirement Of Closed Captioning Rules, Request for Comment* at 1 (Feb. 24, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DA-17-37A1.pdf.

Should the Commission act on NCTA's request at this juncture, we urge the Commission to clarify at a minimum that, in the context of linear program networks raised by NCTA, each network remains responsible as a "video programmer" for providing captioning certifications even if individual program producers do not, and to consider the benefits and tradeoffs to consumers who are deaf or hard of hearing of any action responsive to NCTA's request. In doing so, we urge the Commission to ensure that any such action maintains "the new certification regime[s] . . . enhance[ment] [of the Commission's] ability to enforce the captioning rules against video programmers and VPDs, and thus ensure the needs of consumers are better served."⁸

II. Governmental programming may require captioning under federal disability law even when aired on exempt PEG channels.

Several PEG channel operators and programmers appear to suggest that governmental programming appearing on exempt PEG channels need not be captioned.⁹ For example, the City of Los Angeles argues that it "is not legally required to caption" a variety of governmental programming, including "live . . . coverage of City Council meetings."¹⁰

While the governmental programming aired on exempt PEG channels may be exempt from the Commission's current captioning requirements, we take this opportunity to remind

⁸ *Second Report and Order*, 31 FCC Rcd. at 1490.

⁹ *E.g.*, Comments of E. Puanani Ford at 1 (Feb. 9, 2017), <https://ecfsapi.fcc.gov/file/1020958787615/FCC-05-231-epford.docx>; Comments of City of Boston, MA at 1-2 & n.3 (Feb. 9, 2017), <https://ecfsapi.fcc.gov/file/10209074906748/COMMENTS-BostonMA.pdf>; Comments of City of Los Angeles, CA at 1-2 & n.2 (Feb. 9, 2017), <https://ecfsapi.fcc.gov/file/10209158103831/COMMENTS-Los%20AngelesCA.pdf>; Comments of Lynn Community Television, Inc. (Jan. 23, 2017), <https://www.fcc.gov/ecfs/filing/10120692507838>; Comments of Sacramento Metropolitan Cable Television Commission at 4 (Feb. 9, 2017), <https://ecfsapi.fcc.gov/file/10210133158024/SMCTC%20Comments%20to%20ACM%20Petition.pdf>.

¹⁰ Comments of City of Los Angeles, CA at 1 & n.2.

local government entities that they may nevertheless be obliged to caption their programs under other accessibility laws, including Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act. Any program supported by federal financial assistance or produced by a state or local government entity must be captioned pursuant to Section 504 and Title II to avoid excluding people who are deaf or hard of hearing from participating in the viewership of the program or denying them the benefits of the program.¹¹ We urge the Commission to remind video programmers subject to these laws that they are obliged to caption regardless of their eligibility for an exemption from the Commission's rules.

Respectfully submitted,

/s/

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¹¹ See 29 U.S.C. § 794(a); 42 U.S.C. § 12132; *see also* 28 C.F.R. § 35.160 & App'x B ("A number of comments [in an implementing rulemaking] raised questions about the extent of a public entity's obligation to provide access to television programming for persons with hearing impairments. **Television and videotape programming produced by public entities are covered by this section.** Access to audio portions of such programming may be provided by closed captioning." (emphasis added)).

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